



February 25, 1999

HOUSE BILL No. 1596

DIGEST OF HB 1596 (Updated January 29, 1999 2:54 pm - DI 96)

Citations Affected: IC 22-4; IC 23-1; IC 25-1; noncode.

Synopsis: Unemployment matters. Allows unemployment insurance records to be disclosed if the individual and the employing unit authorize the disclosure. Allows information from unemployment insurance records that is necessary for a lawful investigation to be made available to an agency of the United States or a state agency. Provides that the directors and officers of an employer have personal liability for unemployment taxes owed by the employer. Provides that a person who knowingly and with intent to defraud by making false entries in or keeping double sets of records required to be kept for unemployment compensation purposes commits a Class D felony. Provides that in a corporate dissolution, unless the department of workforce development has issued a clearance, the officers and directors of the corporation are personally liable for amounts owed by the corporation to the department of workforce development if the
(Continued next page)

Effective: July 1, 1999.

Dvorak, Liggett

January 21, 1999, read first time and referred to Committee on Labor and Employment.
February 24, 1999, amended, reported — Do Pass.

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corporation has insufficient assets to pay the amounts owed to the department. Requires a corporation seeking reinstatement after an administration dissolution to submit a certificate to the secretary of state from the department of workforce development stating that all employer contributions owed by the corporation under the worker's compensation statute have been paid. Provides that licensing bureaus and boards may allow the department of workforce development to have access to the name of each person who has a license or has applied for a license. Prohibits a licensing board or bureau from issuing a license to a person who has unpaid contribution liability with the department of workforce development.

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HB 1596—LS 6889/DI 94+



February 25, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1596

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-4-19-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) Each employing
3 unit shall keep true and accurate records containing information the
4 department considers necessary. These records are:
5 (1) open to inspection; and
6 (2) subject to being copied;
7 by an authorized representative of the department at any reasonable
8 time and as often as may be necessary. The commissioner, the review
9 board, or an administrative law judge may require from any employing
10 unit any verified or unverified report, with respect to persons employed
11 by it, which is considered necessary for the effective administration of
12 this article.
13 (b) Except as provided in subsection (d), information obtained or
14 obtained from any person in the administration of this article and the
15 records of the department relating to the unemployment tax or the

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1 payment of benefits is confidential and may not be published or be
 2 open to public inspection in any manner revealing the individual's or
 3 the employing unit's identity, except:

4 (1) in obedience to an order of a court;

5 (2) **when authorized by the individual and the employing unit;**
 6 or

7 (3) as provided in this section.

8 (c) A claimant at a hearing before an administrative law judge or the
 9 review board shall be supplied with information from the records
 10 referred to in this section to the extent necessary for the proper
 11 presentation of the subject matter of the appearance. The commissioner
 12 may make ~~the~~ information necessary for **a lawful investigation or for**
 13 a proper presentation of a subject matter before an administrative law
 14 judge or the review board available to an agency of the United States
 15 or an Indiana state agency.

16 (d) The commissioner may release the following information:

17 (1) Summary statistical data may be released to the public.

18 (2) Employer specific information known as ES 202 data and data
 19 resulting from enhancements made through the business
 20 establishment list improvement project may be released to the
 21 department of commerce only for the following purposes:

22 (A) The purpose of conducting a survey.

23 (B) The purpose of aiding the officers or employees of the
 24 department of commerce in providing economic development
 25 assistance through program development, research, or other
 26 methods.

27 (C) Other purposes consistent with the goals of the department
 28 of commerce and not inconsistent with those of the
 29 department.

30 (3) Employer specific information known as ES 202 data and data
 31 resulting from enhancements made through the business
 32 establishment list improvement project may be released to the
 33 budget agency only for aiding the employees of the budget agency
 34 in forecasting tax revenues.

35 (e) The commissioner may make information available under
 36 subsection (d) only:

37 (1) if:

38 (A) data provided in summary form cannot be used to identify
 39 information relating to a specific employer or specific
 40 employee; or

41 (B) there is an agreement that the employer specific
 42 information released to the department of commerce or budget

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1 agency will be treated as confidential and will be released only
 2 in summary form that cannot be used to identify information
 3 relating to a specific employer or a specific employee; and
 4 (2) after the cost of making the information available to the
 5 person requesting the information is paid under IC 5-14-3.

6 (f) An employee of the department who recklessly violates
 7 subsection (a), (c), (d), or (e) commits a Class B misdemeanor.

8 (g) An employee of the department of commerce or the budget
 9 agency who violates subsection (d) or (e) commits a Class B
 10 misdemeanor.

11 SECTION 2. IC 22-4-32-20 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. The contributions,
 13 penalties, and interest due from any employer under the provisions of
 14 this article from the time they shall be due shall be a personal liability
 15 of the:

16 (1) employer; **and**

17 (2) **directors and officers of an employer;**

18 to and for the benefit of the fund and the employment and training
 19 services administration fund.

20 SECTION 3. IC 22-4-32-23 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) As used in this
 22 section:

23 (1) "Dissolution" refers to dissolution of a corporation under
 24 IC 23-1-45 through IC 23-1-48.

25 (2) "Liquidation" means the operation or act of winding up a
 26 corporation's affairs, when normal business activities have ceased,
 27 by settling its debts and realizing upon and distributing its assets.

28 (3) "Withdrawal" refers to the withdrawal of a foreign corporation
 29 from Indiana under IC 23-1-50.

30 (b) The officers and directors of a corporation effecting dissolution,
 31 liquidation, or withdrawal shall do the following:

32 (1) File all necessary documents with the department in a timely
 33 manner as required by this article.

34 (2) Make all payments of contributions to the department in a
 35 timely manner as required by this article.

36 (3) File with the department a form of notification within thirty
 37 (30) days of the adoption of a resolution or plan. The form of
 38 notification shall be prescribed by the department and may
 39 require information concerning:

40 (A) the corporation's assets;

41 (B) the corporation's liabilities;

42 (C) details of the plan or resolution;

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(D) the names and addresses of corporate officers, directors, and shareholders;

(E) a copy of the minutes of the shareholders' meeting at which the plan or resolution was formally adopted; and

(F) such other information as the board may require.

The commissioner may accept, in lieu of the department's form of notification, a copy of Form 966 that the corporation filed with the Internal Revenue Service.

(c) **Notwithstanding IC 23-1-35-1(e)**, unless a clearance is issued under subsection ~~(g)~~ for a period of one ~~(1)~~ year following the filing of the form of notification with the department; ~~(e)~~, the corporate officers and directors remain personally liable ~~subject to IC 23-1-35-1(e)~~, for any acts or omissions that result in the distribution of corporate assets in violation of the interests of the state. An officer or director held liable for an unlawful distribution under this subsection is entitled to contribution:

~~(1)~~ from every other director who voted for or assented to the distribution; ~~subject to IC 23-1-35-1(e)~~; and

~~(2)~~ from each shareholder for the amount the shareholder accepted.

~~(d)~~ The corporation's officers' and directors' personal liability includes for all contributions, penalties, interest, and fees associated with the collection of the liability due the department. In addition to the penalties provided elsewhere in this article, a penalty of up to thirty percent (30%) of the unpaid contributions may be imposed on the corporate officers and directors for failure to take reasonable steps to set aside corporate assets to meet the liability due the department.

~~(e)~~ If the department fails to begin a collection action against a corporate officer or director within one ~~(1)~~ year after the filing of a completed form of notification with the department; the personal liability of the corporate officer or director expires. The filing of a substantially blank form of notification or a form containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of the officers and directors of the corporation.

~~(f)~~ **(d)** In addition to the remedies contained in this section, the department is entitled to pursue corporate assets that have been distributed to shareholders in violation of the interests of the state. The election to pursue one (1) remedy does not foreclose the state's option to pursue other legal remedies.

~~(g)~~ **(e)** The department may issue a clearance to a corporation effecting dissolution, liquidation, or withdrawal if:



(1) the officers and directors of the corporation have met the requirements of subsection (b); and

(2) request for the clearance is made in writing by the officers and directors of the corporation within thirty (30) days after the filing of the form of notification with the department.

~~(h)~~ (f) The issuance of a clearance by the department under subsection ~~(g)~~ (e) releases the officers and directors from personal liability under this section.

SECTION 4. IC 22-4-34-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. A person who knowingly violates this article commits a Class C misdemeanor, except as otherwise provided. Each day a violation continues constitutes a separate offense.

(b) A person who knowingly and with intent to defraud violates this article by:

(1) making a false entry in the person's records required to be kept under this article; or

(2) keeping more than one (1) set of records required to be kept under this article;

commits a Class D felony.

SECTION 5. IC 23-1-46-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) A corporation administratively dissolved under section 2 of this chapter may apply to the secretary of state for reinstatement. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) state that the corporation's name satisfies the requirements of IC 23-1-23-1; ~~and~~

(4) contain a certificate from the department of state revenue reciting that all taxes owed by the corporation have been paid; **and**

(5) contain a certificate from the department of workforce development stating that all employer contributions owed by the corporation under IC 22-4-10 have been paid.

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under IC 23-1-24-4.



(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

SECTION 6. IC 25-1-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The bureau and the boards may allow the department of state revenue **and the department of workforce development** access to the name of each person who:

(1) is licensed under this chapter; or

(2) has applied for a license under this chapter.

(b) If the department of state revenue notifies the bureau that a person is on the most recent tax warrant list, the bureau may not issue or renew the person's license until:

(1) the person provides to the bureau a statement from the department of state revenue that the person's delinquent tax liability has been satisfied; or

(2) the bureau receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

(c) If the department of workforce development notifies the bureau that a person has unpaid contribution liability, the bureau may not issue or renew the person's license until the person provides to the bureau a statement from the department of workforce development that the person's delinquent contribution liability has been satisfied.

SECTION 7. IC 25-1-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The bureau and the boards may allow the department of state revenue **and the department of workforce development** access to the name of each person who:

(1) is licensed under this chapter; or

(2) has applied for a license under this chapter.

(b) If the department of state revenue notifies the bureau that a person is on the most recent tax warrant list, the bureau may not issue or renew the person's license until:

(1) the person provides to the bureau a statement from the department of revenue that the person's delinquent tax liability has been satisfied; or

(2) the bureau receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

(c) If the department of workforce development notifies the bureau that a person has unpaid contribution liability, the bureau may not issue or renew the person's license until the person provides to the bureau a statement from the department of

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- 1 workforce development that the person's delinquent contribution
- 2 liability has been satisfied.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1596, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 10, after "4." insert "(a)".

Page 5, line 11, reset in roman "C misdemeanor,".

Page 5, line 11, delete "D".

Page 5, line 12, delete "felony,".

Page 5, between lines 13 and 14, begin a new paragraph and insert:

"(b) A person who knowingly and with intent to defraud violates this article by:

(1) making a false entry in the person's records required to be kept under this article; or

(2) keeping more than one (1) set of records required to be kept under this article;

commits a Class D felony."

and when so amended that said bill do pass.

(Reference is to HB 1596 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 10, nays 1.

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